

**8<sup>th</sup> Session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights**

Art. 6: Prevention  
25 October 2022

This statement is made on behalf of Feminists for a Binding Treaty, of which Franciscans International is a member. Our comments pertain to the text of the 3<sup>rd</sup> revised draft.

It is essential to make clear that the instrument also applies to violations committed by the State or its agents in the context of business activities. In line with our statement made last year, we suggest reintroducing the notion of human rights violation in the text, and maintaining the clarification, in the current draft, that the definition of business activities and relationships include those involving state entities in Articles 1.3 and 1.5. In general, we regret that the role of the State as an economic actor is still not addressed in the text including under article 6.

In regard to Article 6.2, we suggest editing the text so that it reads in part “respect internationally recognized human rights, avoid and prevent human rights abuses and violations throughout their business activities and relationships.” We support States that suggested deleting the term “mitigate.”

To ensure accessibility and transparency of human rights due diligence assessments done by businesses, we recommend adding at the beginning of art. 6.3 (a), “In partnership with potentially affected communities and individuals, identify, assess and publish in an accessible manner”. In the same vein, we also suggest amending Art. 6.3(d) so that it reads, “Communicate regularly and in a public, appropriate, and accessible manner to the public and stakeholders, including through gender-responsive consultation with local and Indigenous communities”.

Regarding 6.3(b), we suggest retaining “avoid” -so that it reads “take appropriate measures to avoid and prevent abuses.” In that regard, we also suggest adding a sentence in 6.3 (b) on situations where mitigation of risks is impossible such as in certain contexts of conflict. The issue of immitigability should also be reasserted in Article 6(4)(g), with an additional emphasis in relation to compliance with international humanitarian law, so that it reads:

“Adopting and implementing enhanced and ongoing human rights due diligence measures to prevent human rights abuses in conflict-affected areas, including situations of occupation, and ensure that businesses respect international humanitarian law standards. Given the risk of gross human rights abuses in conflict-affected areas, certain situations may require that businesses refrain from entering into activities and/or relationships or cease them depending on the phase of operation.”

We support maintaining the third revised draft’s reference in Article 1.2 to the right to a clean, healthy, and sustainable environment and to fundamental freedoms in the definition of human

rights abuse. We hence support language in Art. 6.4(a), where human rights due diligence includes 'environmental and climate change impact assessments; as well as language in Art. 6.4(e) on public reporting by businesses on environmental and climate change standards.

We recall that a gender perspective is essential to understand businesses' differentiated human rights impacts including in the context of human rights due diligence. We hence generally support article 6.4(b) of the third draft and reiterate the textual proposals we made last year to strengthen this provision. Consultations with Indigenous peoples must be undertaken in accordance with the internationally agreed standards of free, prior and informed consent in article 6.4(d).

Finally, the LBI must protect against corporate influence in government decision-making in the context of business activities, we support maintaining the third revised draft's Article 6.8 addressing this concern and suggest strengthening it in line with our comments from last year.